IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2130 OF 2005

Krishna Mishra, adult, Indian Inhabitant, carrying on business in the name and style of M/s. Shri Hari Om Films, a proprietary concern, having office at B-3, Rokariya, Compound, Yari Road, Versova, Andheri (West), Mumbai – 400 061. ... Petitioner

Versus

1. Union of India, Aayakar Bhavan Annexe, New Marine Lines, Mumbai – 400 020.
2. Central Board of Film Certification, having office at 91-E, Bhatat Bhavan, Walkeshwar Road, Mumbai – 400 006. ... Respondents

Mr. R.I. Morey i/b R.S. Mishra for the petitioner.

Mr. R.V. Desai, senior advocate with Mr. Y.R. Mishra for the respondents.

CORAM : SMT. RANJANA DESAI &
ABHAY S. OKA, JJ.

DATE ON WHICH THE JUDGMENT RESERVED : 15TH DECEMBER, 2005.

DATE ON WHICH THE JUDGMENT PRONOUNCED : 13TH JANUARY, 2006.

JUDGMENT:- [Per (Smt.) Ranjana Desai, J.]

1. The petitioner is a film producer / director and is doing the said business under the name and style of M/s. Shree Hari Om Films. Respondent 1 is the Union of India and respondent 2 is the Central Board of

Film Certification duly constituted under section 3 of the Cinematograph Act, 1952 (37 of 1952) (for short, “the said Act”).

2. The petitioner has recently produced a Hindi Feature Film titled as “Wounded” in 35 mm Cinemascope consisting of 16 reels (for convenience, “the said film”). The said film is based on the life of a woman dacoit called Seema Parihar. It is an unusual film in the sense that Seema Parihar herself has acted in the said film. It shows how a simple village girl is forced to become a dacoit after her abduction, on account of acute poverty of her parents. The petitioner submitted the said film to respondent 2 Board for obtaining certificate for public exhibition as compulsorily required under section 5-A of the said Act. Respondent 2 Board recommended and suggested certain cuts and changes in the said film and granted "A" certificate subject to them.

3. Respondent 2 Board in its order dated 31/1/2005 observed that the said film has been viewed by the Examining Committee and the Board has come to the conclusion that the film is not suitable for unrestricted public exhibition but may be suitable for public exhibition restricted to adults, provided certain excisions/modifications are carried out in the said film as listed in the Annexure. It was further observed that if the said excisions/modifications are carried out, the said film may be sanctioned for public exhibition restricted to adults. It is necessary to quote the relevant portion of the order dated 31/1/2005 passed by respondent 2 Board. It reads

thus :

> "Reasons for grant of an "A" Certificate to the film subject to the following cuts:
>
> The theme of the film is on dacoit, there are lot of visuals of violence which are not suitable for non adults. Hence, the Board unanimously recommended grant of "A" Certificate subject to the following cuts :

Cut No.	***Reel No.***			
1.	Gen	:	Delete all abusive words and dialogues wherever they occur in the film.	2(vii) 2 (ix)
2.	V	:	Delete the entire scene showing close up bullet injury incidentally occurred by firing of Seema Parihar.	2(iv)
3.	VI	:	Reduce by 70% the visuals of spitting on the face by Ganbir.	2(vii)
4.	IX	:	Reduce by 70% the visuals showing urination on Ganbir's face by Lal.	2(vii)"

4. Being aggrieved by the said order, the petitioner preferred an appeal to the Film Certification Appellate Tribunal (for short, "the Tribunal") under section 5C of the said Act. It was the case of the petitioner before the Tribunal that all the visuals and dialogues recommended by respondent 2 Board for cuts are essentially required in the said film because of its theme. Abusive language is common amongst the dacoits, who reside in Chambal Ghati. The said film is shot at Chambal Ghati and the characters are also real. According to the petitioner, if the cuts are carried out, the true story of the exploitation, harassment and social torture of an innocent woman would not come before the people. The cuts suggested by respondent 2 Board would adversely affect the theme of the said film. The members of the

Tribunal viewed the said film and formed an unanimous opinion that the film cannot be granted even an “adult” certificate in its present form. The Tribunal ordered the following deletions.

> “**Cut No.1, Reel No.General.**
> Delete the abusive words “Bhenchod and Matherchod” by 25% from the entire film.
>
> **Cut No.2, Reel No.2.**
>
> Delete the words spoken by Chacha “Ane de tere thukeye ko aaj to uski bhi gaand mein danda pale dunga.”
>
> **Cut No.3, Reel No.3.**
>
> Delete the words spoken by Thakuraien “In gahano ke chilke apni gaand mein dal le.”
>
> **Cut No.4, Reel No.6.**
>
> Reduce to a flash the visual of spitting on the face by Gambhir.
>
> **Cut No.5, Reel No.9.**
>
> Reduce to a flash the visual showing urination on Gambhir's face by Lala.”

The Tribunal granted “A” certificate to the said film subject to the deletions quoted hereinabove.

5. Being aggrieved by the order of respondent 2 Board dated 31/1/2003 and of the Tribunal dated 18/5/2005, the petitioner has approached this court.

6. We have heard Mr. Morey, the learned counsel appearing for the petitioner. Mr. Morey strenuously contended that considering the fact that the said film is based on the life of bandit Seema Parihar, respondent 2 Board as well as the Tribunal ought not to have ordered deletion of abusive words. He submitted that the said film aims at conveying a message to the people. The film is shot in Chambal Ghati and is based on the life of bandit Seema Parihar, who has herself acted in the said film. The abusive words are, therefore, very natural to the theme and if they are ordered to be deleted, the theme of the said film would be adversely affected. The film seeks to create resentment in the minds of general public as regards the way in which a young girl of 13 years is abducted from a village by a rich man of the same village just because she refused to marry him. It aims at creating a general anger and disgust amongst people about the manner in which a vulnerable woman was tortured after abduction and compelled ultimately to become a bandit. It portrays how a woman's dignity and honour can be trampled over by powerful rich people. The said film must appear natural if it has to truly convey a message to the people. If the abusive words are removed/deleted, it will loose its soul. The learned counsel further submitted that even the visuals which have been asked to be reduced to a flash are very essential to the theme of the said film and the Tribunal erred in ordering that the visuals be reduced to a flash.

7. The learned counsel drew our attention to the judgment of the Supreme

Court in ***Bobby Art International, etc. v. Om Pal Singh Hoon and others, AIR 1996 SC 1846***, where the Supreme Court was dealing with the question whether the certificate of exhibition awarded to the film “Bandit Queen” should be quashed and whether a restrain order should be issued as regards exhibition of that film in India. The learned counsel pointed out that the visuals in the film Bandit Queen were far more shocking than the visuals in the said film and the abusive words were of similar type. Yet, the Supreme Court confirmed the order of the Tribunal granting "A" certificate upon certain conditions. The Supreme Court found that the swear words used in the film can be heard in every city, town and village street and the use of the swear words and scenes of nudity and rape were in aid of the theme. He submitted that the theme of the said film is similar to the theme of the film “Bandit Queen” and, hence, the judgment of the Supreme Court in ***Bobby Art International' scase (supra)*** is squarely applicable to the present case. According to the learned counsel, therefore, the impugned orders deserve to be set aside.

8. We have also heard Mr. Desai, the learned senior counsel appearing for the respondents. He submitted that the abusive words used in the said film are more severe as compared to those used in the film “Bandit Queen” and the visuals are also repulsive and likely to arouse prurient thoughts. He submitted that the use of such abusive words and visuals will have a very unhealthy effect on the society. He submitted that if the cuts and excisions

are not directed to be carried out, the said film would provoke gullible people to accept what is portrayed in the film as a way of life and that would be hazardous to the interest of the society. He, therefore, submitted that no interference is necessary with the impugned orders.

9. Considering the importance of the controversy with which we are concerned, we have given our deepest consideration to the submissions advanced by both sides in order to ascertain whether any interference is necessary with the impugned orders. We have also viewed the said film as well as the film “Bandit Queen”.

10. The said film is based on a true story. It depicts the life of bandit Seema Parihar. She belonged to a poor farmer's family. They stayed in a remote village. One Raghvendra Singh Sengar, a rich man from the same village wanted to marry Seema Parihar. Because of the age difference, her father did not accept the proposal. Raghvendra Singh and his uncle Gambheer Singh Sengar tried to pressurise Seema Parihar's family to accept the proposal. Seema Parihar's mother Smt. Indrani refused to accept the proposal when they visited Seema Parihar's house. Seema Parihar's family was then abused in most filthy language. They were threatened with dire consequences. Lalloo Singh Sengar, the father of Raghvendra Singh and Gambheer Singh, the uncle of Raghvendra Singh decided to take revenge. They abducted Seema Parihar, who was aged about 13 years with the help of notorious dacoits Lala Ram and Kusuma Nain. Seema Parihar's father tried

to take the help of police to trace his daughter but the local police had joined hands with Lalloo Singh and his family. During that period, Seema Parihar was kept by the dacoits in confinement. They started taking Seema Parihar with them while committing dacoity. They started using her name as their associate. This resulted in her name being mentioned in the police records as a wanted notorious dacoit. Seema Parihar made several attempts to escape from their confinement but she was unsuccessful. Instead of helping Seema Parihar's family, the police harassed the family because the dacoits portrayed her as their associate. Seema Parihar's house was sealed by the police. Seema Parihar had no option but to be with the dacoits and learn to commit dacoities. Thus, an innocent young girl became a full-fledged dacoit. She was married to Nirbhay Singh Goojar, a dacoit but because Nirbhay Singh Goojar was a womaniser, she turned to Lala Ram and became his concubine. Though she was forced to become a bandit, she always nurtured a desire to lead a good life and have a child. She delivered a son in the year 2000. Thereafter, she wanted to lead a good life. She wanted to leave the dacoits. She started living in a small town Rura, District Kanpur. During that period, dacoit Lala Ram was killed by the police and, thereafter, Seema Parihar surrendered to the police in November, 2000. The unusual aspect of the said film is that Seema Parihar has acted her role in the said film. Many of the characters in the said film are real and the said film is shot at the same Chambal Ghati where Seema Parihar was tortured and made to become a dacoit. The film shows how a 13 year old girl was dragged out of her house, tortured, manhandled and taken all over to commit dacoity and made to

accept the commission of dacoities as a profession. The question is whether cuts and excisions suggested by the Tribunal are justified.

11. In this connection, reliance is rightly placed on the judgment of the Supreme Court in ***Bobby Art International' s case (supra)***. In that case, the Supreme Court was concerned with the film "Bandit Queen". That film dealt with the life of Phoolan Devi. It was also based upon a true story. We shall reproduce it as narrated by the Supreme Court. Still a child, Phoolan Devi was married to a man old enough to be her father. She was beaten and raped by him. She was tormented by the boys of the village and beaten by them when she foiled the advances of one of them. A village panchayat called after the incident blamed Phoolan Devi for attempting to entice the boy, who belonged to a higher caste. Consequent upon the decision of the village panchayat, Phoolan Devi had to leave the village. She was then arrested by the police and subjected to indignity and humiliation in the police station. Upon the intervention of some persons she was released on bail. Their intervention was not due to compassion but to satisfy their carnal appetite. Phoolan Devi was, thereafter, kidnapped by dacoits and sexually brutalised by their leader, a man named Babu Gujjar. Babu Gujjar was killed by one Vikram Mallah. Phoolan Devi was attracted by Vikram Mallah and threw her lot in with him. With the help of Vikram Mallah, she took her revenge by killing her husband. One Sri Ram, the leader of a gang of Thakurs, who had been released from jail, made advanses to Phoolan Devi. He was spurned. He killed Vikram Mallah. Phoolan Devi was gang raped by Sri Ram, Lalaram

and others. She was stripped naked, paraded and made to fetch water from the village well under the gaze of the villagers but no one came to her rescue. To avenge herself upon her persecutors, she joined a dacoits' gang headed by Baba Mustkin. In avenging herself upon Sri Ram, she humiliated and killed twenty Thakurs of the village of Behmai. Ultimately, she surrendered and was in jail for a number of years.

12. A book called “India's Bandit Queen” was written on her life by Mala Sen. The film “Bandit Queen” is based on that book. The Revising Committee of the Censor Board recommended that the film be granted an “A” certificate, subject to certain excisions and modifications. Aggrieved by the decision of the Revising Committee, an appeal was filed to the Tribunal. The Tribunal was chaired by Lentin, J., a retired judge of this court and three ladies. We shall quote the observations made by the Tribunal because the Supreme Court has upheld them. The Tribunal observed that the film portrays the trials and tribulations and the various humiliations (mental and physical) heaped on Phoolan Devi from childhood onwards, which out of desperation and misery drove her to dacoity and the revenge which she takes on her tormentors and those who had humiliated and tortured and had physically abused her. While dealing with the expletives used in the film, it was observed that the tone and tenor of the dialogues in this film reflect the nuances locally and habitually used and spoken in the villages and in the ravines of the Chambal, not bereft of expletives used for force and effect by way of normal and common parlance in those parts; these expletives are not

intended to be taken literally. It was further observed that there is nothing sensual or sexual about these expletives used as they are in ordinary and habitual course as part of the language in those parts and express as they do emotions such as anger, rage, frustration and the like, and represent as they do the colour of the various locales in this film. As regards deletion of a scene of policemen hitting Phoolan Devi with the butt of a gun, the Tribunal said that the deletion would negate the very impact of this film in its endeavour to depict the maltreatment and cruelty heaped upon the victim by the perpetrators, which resulted in the former turning her face against and seeking revenge on, the perpetrators of her humiliation and degradation. The Tribunal further observed that deletion or even reduction of this sequence would have a deleterious effect on the powerful sequences which follow, as it would also leave the average audience bewildered as to the intensity of the bitterness the victim rightly feels towards her tormentors. As regards the fact that Phoolan Devi is shown naked being paraded in the village after being humiliated, the Tribunal observed that these visuals could but create sympathy towards the unfortunate woman in particular and revulsion against the perpetrators of crimes against women in general. It was observed that the sequence was an integral part of the story. It was not sensual or sexual, and was intended to as indeed it did, create revulsion in the minds of the average audience towards the tormentors and oppressors of women. It was observed that to delete or even to reduce these climactive visuals, would be a sacrilege. The Tribunal permitted certain words of abuse in the vernacular to be retained because of the context in which they were spoken and the

persons by whom they were spoken. The Tribunal thus passed a unanimous order and granted an “A” certificate to the film “Bandit Queen” with certain excisions and modifications.

13. A writ petition came to be filed in the Delhi High Court seeking to quash the certificate granted to the film and to restrain its exhibition in India. The learned single judge of the Delhi High Court allowed the writ petition and quashed the certificate granted to the film. The learned single judge directed the Censor Board to consider the grant of an “A” certificate to it after excisions and modifications in accordance with his order had been made. An appeal was carried from the said judgment before the Division Bench of the Delhi High Court. The Division Bench upheld the view taken by the learned single judge. Being aggrieved by the said judgment, the producer of the film approached the Supreme Court.

14. The Supreme Court referred to its earlier judgment in ***K.A. Abbas v. Union of India, (1970) 2 SCC 780*** and reaffirmed its view in that case. The Supreme Court referred to several other judgments delivered by it; considered the relevant provisions of the said Act and the guidelines issued by the Central Government; set aside the Delhi High Court's judgment and upheld the order of the Tribunal. The Supreme Court held that the guidelines issued under the provisions of sub-section 2 of section 5-B of the said Act require the authorities concerned with film certification to be responsive to the

values and standards of society and take note of social change. The guidelines require the authorities to ensure that artistic expression and creative freedom are not unduly curbed. The film must be judged in its entirety from the point of view of its overall impact. It must also be judged in the light of the period depicted and the contemporary standards of the people to whom it relates, but it must not deprave the morality of the audience. The Supreme Court referred to clause 2 of the said guidelines which requires that human sensibilities are not offended by vulgarity, obscenity or depravity, that scenes degrading or denigrating women are not presented and scenes of sexual violence against women are avoided, but if such scenes are germane to the theme, they be reduced to a minimum and not particularised. The Supreme Court further observed that the guidelines are broad standards. They cannot be read as one would read a statute. Within the breadth of their parameters the certification authorities have discretion. The Supreme Court observed that where the theme is of social relevance, it must be allowed to prevail. Such a theme does not offend human sensibilities nor extol the degradation or denigration of women. The Supreme Court then referred to the facts of the film “Bandit Queen” which we have already reproduced hereinabove. The Supreme Court then observed that the story of the film “Bandit Queen” is not a pretty story. There are no syrupy songs or pirouetting round trees. It is the serious and sad story of a worm turning : a village born female child becoming a dreaded dacoit. An innocent who turns into a vicious criminal because lust and brutality have affected her psyche so. The film levels an accusing finger at members of society who had tormented

Phoolan Devi and driven her to become a dreaded dacoit filled with the desire to revenge. The Supreme Court then observed that it is in this light that the individual scenes have to be viewed. The Supreme Court then referred to the scenes where Phoolan Devi was humiliated, stripped naked, paraded, made to draw water from the well under the gaze of the villagers. The Supreme Court observed that the film “Bandit Queen” tells a powerful human story and to that story the scene of Phoolan Devi's enforced naked parade is central. It helps to explain why Phoolan Devi became what she did : Her rage and vendetta against the society that had heaped indignities upon her. The Supreme Court further observed that too much need not be made of a few swear words the like of which can be heard every day in every city, town and village street. It observed that no adult would be tempted to use them because they are used in this film. The Supreme Court concluded by saying that the scenes of nudity and rape and the use of expletives, so far as the Tribunal had permitted them, were in aid of the theme and intended not to arouse prurient or lascivious thoughts but revulsion against the perpetrators and pity for the victim. With these observations, the Supreme Court set aside the Delhi High Court's order, inter alia, directing deletion of expletives and deletion of frontal nudity of Phoolan Devi and other cuts or excisions as regards rape scenes and restored the Tribunal's order.

15. In our opinion, the facts of the present case are to a great degree similar to the facts of the film “Bandit Queen” and, therefore, the observations of the Supreme Court in ***Bobby Art International' case (supra)*** are tailor

made for the facts of the present case. We have with purpose already quoted extensively from the judgment of the Supreme Court in ***Bobby Art International' case (supra)*** and we do not think we need to say anything more. In this case also, the victim is a woman, who was forced to accept the commission of dacoities as a career. She was tormented and tortured. Her family was similarly persecuted. The said film is meant to convey to the people what atrocities can be committed on a poor vulnerable woman. It seeks to make people aware of the horrendous nature of crimes which are committed against women so that the society develops abhorrence for such crimes. The expletives used in the said film are an integral part of the theme. If they are removed, the said film will become lacklustre. It will not create resentment about crime against women in the minds of people which it is intended to create. Same is the case with visuals. All these expletives and visuals form one complete whole which is intended to have powerful impact on the people. We, therefore, feel that these cuts have been wrongly ordered to be carried out. So far as the direction that the visuals of spitting on the face by Gambhir and visuals showing urination on Gambhir's face by Lal are concerned, the same should be reduced by 85% instead of reducing them to a flash. Hence, we pass the following order:

O R D E R

The impugned orders are set aside. The visuals of spitting on the

face by Gambhir and visuals showing urination on Gambhir's face by Lal are reduced by 85%. The said film “Wounded” is granted “A” certificate subject to the above reduction.

12. The petition is disposed of in the aforestated terms.

[SMT. RANJANA DESAI, J.]

[ABHAY S. OKA, J.]